

United States
Circuit Court of Appeals

For the Ninth Circuit.

WM. A. MARSHALL, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and THOMAS WINKLER,
Appellants.

vs.

ANDREW F. MAHONY COMPANY, a Corporation, and FIDELITY-PHOENIX FIRE INSURANCE COMPANY, a Corporation,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the Western District of Washington.
Northern Division.

FILED

JUL 28 1931

PAUL P. O'BRIEN,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

Messrs. ANTHONY SAVAGE and JEFFREY HEIMAN, Solicitors for Appellant, Wm. A. Marshall, 310 Federal Building, Seattle, Washington.

L. B. SULGROVE, Esquire, Solicitor for Appellant Thomas Winkler, 100 City Hall Annex, Tacoma, Washington.

Messrs. BOGLE, BOGLE & GATES, Central Building, Seattle, Wash., and

Messrs. GROSSCUP & MORROW and JOHN AMBLER, 920 Republic Building, Seattle, Washington, Solicitors for Appellees. [1*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 781.

ANDREW F. MAHONY COMPANY, a corporation, and FIDELITY-PHOENIX FIRE INSURANCE COMPANY, a corporation,
Complainants,

vs.

WM. A. MARSHALL, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and THOMAS WINKLER,
Defendants.

*Page number appearing at the foot of page of original certified Transcript of Record.

BILL OF COMPLAINT.

Come now the complainants and for their Bill of Complaint against the defendants, allege:

I.

That the complainant, Andrew F. Mahony Company, is now and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of California and an employer within the provisions of the Longshoremen's and Harbor Workers' Compensation Act, hereinafter referred to as "the Act".

II.

That the complainant, Fidelity-Phoenix Fire Insurance Company, is now, and at all times herein mentioned was, an insurance company organized as a corporation under and by virtue of the laws of the State of New York, and the insurance carrier secured by the complainant Andrew F. Mahony Company, a corporation, in accordance with the provisions of the Act.

III.

That the defendant Wm. A. Marshall is now, and at all times herein mentioned was, the Deputy Commissioner of the Fourteenth Compensation District under the provisions of the Act.

IV.

That the defendant Thomas Winkler, hereinafter referred to as the "claimant", was at the time of receiving the personal [2] injury hereinafter re

ferred to, an employee of the complainant Andrew F. Mahony Company, a corporation, within the provisions of the Act.

V.

That on the 8th day of August, 1930, the claimant was in the employ of the complainant Andrew F. Mahony Company a corporation, on board the S.S. "Jane Nettleton", in the harbor in the City of Seattle, State of Washington, and while so employed sustained personal injury thereon. That thereafter a hearing thereon was held pursuant to the provisions of said Act before the defendant, Wm. A. Marshall, as said Deputy Commissioner, on the 23rd day of October, 1930, resulting in a compensation order and award of compensation being filed by said Wm. A. Marshall, as said Deputy Commissioner, in his office on the 31st day of October, 1930, a copy of which compensation order and award is attached hereto, marked "Exhibit A", and by this reference made a part hereof. That a certified copy of the transcript of the testimony taken at said hearing, together with the several exhibits introduced in evidence thereat, is filed herewith under the certificate of said Deputy Commissioner.

VI.

That said compensation order and award of compensation is not in accordance with law and the provisions of the Act in this: That it appears from the evidence adduced at said hearing that claimant worked solely in the occupation of a longshoreman during substantially the whole of the year imme-

diately preceding his injury, earning therefrom the sum of \$1266.20; that the determination of earnings and the compensation rate to be based thereon is provided by Section 10 of said Act; that based upon the actual and known earnings of the claimant, his compensation rate under said Section, Sub-division (c) thereof, is the sum of \$16.23 per week, which said sum the complainants since the date of said injury have been and are now paying to claimant; that [3] the defendant Wm. A. Marshall, as said Deputy Commissioner, arbitrarily and capriciously failed and refused to determine said compensation rate pursuant to Section 10, Sub-division (c) of said Act, and determined the same under Sub-division (b) thereof fixing the same in the maximum amount allowable under said Act. to-wit: In the sum of \$25.00 per week; that said Sub-division (b) or (2) of said Section 10 can not fairly and reasonably be applied in determining said compensation rate under the evidence adduced at said hearing.

VII.

That said claimant Thomas Winkler was not at the time of his said injury and not now, entitled to compensation at the rate of \$25.00 per week as awarded by said Deputy Commissioner, Wm. A. Marshall, in his compensation order and award dated October 31, 1930, nor is said claimant entitled to compensation at any rate in excess of \$16.23 per week.

VIII.

That said claimant Thomas Winkler is insolvent and if an interlocutory injunction is not issued herein staying the payment of the amounts in excess of \$16.23 per week required to be paid by the compensation order and award filed on the 31st day of October, 1930, as aforesaid, said excess payments will have to be made, and if the complainants herein are successful in this action, said payments in excess of \$16.23 per week cannot be recovered from said claimant and said complainants will lose the benefits of any favorable decision herein, and by reason thereof will suffer irreparable damage.

Wherefore complainants pray that said compensation order and award be suspended and set aside and that the payments of the [4] amounts in excess of \$16.23 per week required by said award be stayed pending final decision herein, and for such other, further or different relief as to the Court may seem equitable and just, together with costs of suit.

BOGLE, BOGLE & GATES,

LAWRENCE BOGLE,

STANLEY B. LONG,

GROSSCUP & MORROW,

JOHN AMBLER,

Solicitors for Complainants. [5]

United States of America,
 State of Washington,
 County of King.—ss.

Stanley B. Long being first duly sworn upon oath deposes and says:

That he is one of the solicitors for the complainants herein; that he makes this verification by authority for and on their behalf and for the reason that none of the officers of said complainants reside in or are within the State of Washington; that he has read the foregoing Bill of Complaint, knows the contents thereof and that the same is true as he verily believes.

STANLEY B. LONG.

Subscribed and sworn to before me this 6th day of November, 1930.

[Notarial Seal]

WARREN BROWN, JR.

Notary Public in and for the State of Washington,
 residing at Seattle. [6]

(Title of Court and Cause.)

“Exhibit A”

COMPENSATION ORDER AWARD
 OF COMPENSATION.

Such investigation in respect to the above entitled claim having been made as is considered nec-

essary and a hearing having been duly held in conformity with law,

The Deputy Commissioner makes the following

FINDINGS OF FACT:

That on the 8th day of August, 1930, the claimant above named was in the employ of the employer above named at Seattle, in the State of Washington, in the Fourteenth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by the Fidelity-Phoenix Fire Insurance Company; that on said day claimant herein while performing service for the employer upon the navigable waters of the United States, sustained personal injury resulting in his disability while he was employed as a longshoreman on board the steamship "Jane Nettleton", said steamship being then situated at Seattle, in the State of Washington; that while the claimant above named was so employed and engaged in lifting bags of salt he sustained an inguinal hernia, causing injury and resulting in his disability; that notice of injury was given within thirty days after the date of such injury to the Deputy Commissioner and to the employer; that the employer furnished claimant with medical treatment, etc., in accordance with Section 7 (a) of the said Act; that the claimant was engaged solely in the occupation of a longshoreman for many years prior to the time of injury; that the actual earnings of the claimant for

the calendar years 1927, 1928 and 1929 were respectively \$1,163.16; \$1,266.63, and \$1,406.29 and during the first six months of the year 1930, the earnings of the claimant amounted to the sum of \$620.87; that during the year immediately preceding his injury the claimant was disabled by reason of illness for ten days, but during the remainder of said period he followed solely the employment of a longshoreman, reporting to the place of employment as frequently as required, being ready and willing to undertake and perform all work as a longshoreman offered to him; that during the said period the claimant earned a total of [7] \$1,266.20, based on an hourly wage, for work performed by him as longshoreman; that during said period the claimant worked as a longshoreman on 182 days or parts of days and, therefore, claimant did not work in such employment during the whole of the year immediately preceding his injury; that M. Diegnan is a workman engaged in the occupation of a longshoreman in the same port in which the claimant sustained his injury and is an employee of the same class as the claimant; that during the year immediately preceding said injury the said M. Diegnan worked as a longshoreman 284 days and, therefore, worked substantially the whole of said year; that said Diegnan earned a total of \$2,314.45 for such labor, an average of \$8.15 per day, during the days so employed; that 300 times the said average of \$8.15 per day, amounts to the sum of \$2,445.00; that the average annual earnings of the claimant, as determined by subdivision (b)

of section 10 of the Act, is \$2,445.00; that as a result of the injury sustained the claimant was wholly disabled from August 9, 1930, to and including October 17, 1930, and is entitled to 10 weeks' compensation, \$25.00 per week, for such disability; that the disability of the claimant continued at the time of the hearing on October 23, 1930; that the employer has paid \$178.53 to claimant as compensation.

Upon the foregoing facts the Deputy Commissioner makes the following

AWARD:

That the employer, Andrew F. Mahony Company, and the insurance carrier, Fidelity-Phoenix Fire Insurance Company, shall pay to the claimant compensation as follows: 10 weeks at \$25.00 per week, covering the period from August 9, 1930, to and including October 17, 1930, and amounting to the sum of \$250.00 less \$178.53 previously paid by the employer to the claimant as compensation; that additional compensation shall be paid to claimant until the termination of his disability or the further order of the Deputy Commissioner; that the employer and insurance carrier shall furnish claimant with such medical, surgical and hospital treatment as may be appropriate to the further treatment and cure of his disability.

Given under my hand at Seattle, Washington, this 31st day of October, 1930.

WM. A. MARSHALL.
Deputy Commissioner,
Fourteenth Compensation District.

PROOF OF SERVICE.

I hereby certify that a copy of the foregoing Compensation Order was sent by registered mail to the claimant, the employer, and the insurance carrier at the last known address of each as follows:

THOMAS WINKLER, 2516 3rd Ave., Seattle, Washington.

ANDREW F. MAHONY COMPANY, 1 Drumm Street, San Francisco, Calif.

FIDELITY - PHOENIX FIRE INSURANCE CO., c/o Bogle, Bogle & Gates, Central Bldg., Seattle, Wash.

MR. JOHN AMBLER, Republic Building, Seattle, Washington.

Mailed October 31, 1930.

WM. A. MARSHALL,
Deputy Commissioner.

[Endorsed]: Filed Nov. 12, 1930. [8]

(Title of Court and Cause.)

APPEARANCE.

To the Clerk of the United States District Court:

Please enter my appearance as attorney for the defendant, Thomas Winkler, in the above entitled action. All papers may be served upon the under-

signed at 100 City Hall Annex, Tacoma, Washington.

L. B. SULGROVE,
Attorney for defendant, Thomas
Winkler, 100 City Hall Annex,
Tacoma, Washington.

[Endorsed]: Filed Dec. 9, 1930. [9]

(Title of Court and Cause.)

APPEARANCE.

To ANDREW F. MAHONY COMPANY, a corporation, and FIDELITY-PHOENIX FIRE INSURANCE COMPANY, a corporation, Complainants, and to BOGLE, BOGLE & GATES, GROSSCUP & MORROW, and JOHN AMBLER, attorneys for Complainants:

You, and each of You, will hereby please take notice That Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney for said District, hereby enter their appearance as attorneys for Wm. A. Marshall, Deputy Commissioner Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, one of the defendants in the above en-

titled action, and you will please serve all notices, and papers in connection with said case upon them at their address stated below.

ANTHONY SAVAGE,
United States Attorney.

JEFFREY HEIMAN,
Assistant United States Attorney.
Office and P. O. Address, 307 Federal
Building, Seattle, Washington.

[Endorsed]: Filed Nov. 20, 1930. [10]

(Title of Court and Cause.)

MOTION.

Comes now the defendant, Thomas Winkler, and moves the Court for an order dismissing the complainants' bill herein, upon the ground and for the reason that said bill fails to state fact sufficient in equity or in law to entitle the complainants to the relief prayed for, or for any relief, and upon the further ground that the complainants' bill herein, together with the certified record of the Commissioner, which is a part hereof, affirmatively establish that there was competent evidence to support the Findings and Award of Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District, sought to be enjoined herein. This motion is made upon the records and files herein.

In the event this motion is overruled, but without waiving the same, defendant, Thomas Winkler, prays leave to answer herein on the merits.

L. B. SULGROVE,
Attorney for Defendant Thomas Winkler.[11]

(Title of Court and Cause.)

MOTION TO DISMISS.

Come now Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney for said District, attorneys for William A. Marshall, Deputy Commissioner, United States Employees' Compensation Commission, defendant in the above entitled cause, and move this Court for an order dismissing the bill of complaint on file herein on the following ground:

I.

The bill of complaint does not state facts sufficient to constitute a valid cause of action in equity.

ANTHONY SAVAGE,
United States Attorney.

JEFFREY HEIMAN,
Assistant United States Attorney.

[Endorsed]: Filed Dec. 12, 1930. [12]

(Title of Court and Cause.)

ANSWER OF THE DEFENDANT
THOMAS WINKLER.

Comes now the defendant Thomas Winkler, and for answer to the bill of complaint of the complainants herein, admits, denies and alleges:

I.

Admits paragraphs numbered I, II, III, IV and V of said bill of complaint.

II.

Denies paragraphs numbered VI, VII and VIII.

WHEREFORE, having fully answered this defendant prays that complainants' bill be dismissed, and for such other and further relief as to the court seems meet.

L. B. SULGROVE,

Attorney for Defendant Thomas Winkler. [13]

State of Washington,
County of King.—ss.

Thomas Winkler, being first duly sworn upon his oath deposes and says: That he is one of the defendants in the above entitled action; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

THOMAS WINKLER.

Subscribed and sworn to before me this 15th day of December, 1930.

.....
Notary Public in and for the State
of Washington, residing at Tacoma.

Notarial Seal of L. B. Sulgrove.

[Endorsed]: Filed Dec. 17, 1930. [14]

—————
In the District Court of the United States for the
Western District of Washington,
Northern Division.

No. 781

ANDREW F. MAHONY COMPANY, a corpora-
tion, and FIDELITY-PHOENIX FIRE IN-
SURANCE COMPANY, a corporation,
Complainants,

vs.

WM. A. MARSHALL, Deputy Commissioner, Four-
teenth Compensation District under the Long-
shoremen's and Harbor Workers' Compensation
Act, and THOMAS WINKLER,
Defendants.

FINAL DECREE.

This matter having come on duly and regularly for hearing before the undersigned, Judge of the above entitled Court, on the 15th day of December, 1930, upon defendants motion to dismiss and upon the merits, and complainants having been represented by their solicitors Messrs. Bogle, Bogle &

Gates, Lawrence Bogle, Stanley B. Long, Grosscup & Morrow and John Ambler and the defendant Wm. A. Marshall having been represented by Anthony Savage and Jeffrey Heiman, and Cameron Sherwood, U. S. District Attorney and Assistant U. S. District Attorney, respectively, and the defendant Thomas Winkler having been represented by his solicitor L. B. Sulgrove, and leave having been granted to the Waterfront Employers Union of San Francisco and to the Waterfront Employers of Portland, and to the State Industrial Accident Commission of Oregon, to appear as amici curiae, and said amici curiae having been represented as follows: Messrs. Erskine Wood and Gunther F. Krause for the Waterfront Employers of Portland; Messrs. McCutchen, Olney, Mannon & Greene, Farnham P. Griffiths and Charles E. Finney for Waterfront Employers Union of San Francisco; I. H. Van Winkle and Thomas G. Ryan, Attorney General of the State of Oregon and Assistant Attorney General of the State of Oregon, respectively, [15] for the State Industrial Accident Commission of Oregon, and the Court having examined all records and files, and the testimony introduced before the Deputy Commissioner pertaining to this cause, and having heard argument by respective counsel herein, and having examined the briefs by them submitted, and being in the premises fully advised, having filed his written decision on January 12, 1931.

IT IS NOW, THEREFORE, HEREBY ORDERED, ADJUDGED and DECREED that said

motion to dismiss be and the same is hereby denied, to which defendants except and their exceptions are hereby allowed.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that said compensation order and award made by the defendant Wm. A. Marshall, as Deputy Commissioner, and referred to in the Bill of Complaint herein, be and the same is hereby suspended and set aside and all payments due under said award in excess of \$16.23 per week be and the same are hereby permanently enjoined, to all of which defendants except and their exceptions are hereby allowed.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that complainants have and they are hereby awarded their lawfully taxable costs, to all of which defendants except and their exceptions are hereby allowed.

DONE IN OPEN COURT this 12th day of January, 1931.

JEREMIAH NETERER,
United States District Judge.

Approved as to form; formal notice of presentation expressly waived:

ANTHONY SAVAGE,
CAMERON SHERWOOD,
Solicitors for defendant Wm. A. Marshall.
L. B. SULGROVE,
Solicitor for defendant Thomas Winkler.

[Endorsed]: Filed Jan. 12, 1931.

E Journal 2, Pg. 385. [16]

(Title of Court and Cause.)

STIPULATION.

IT IS HEREBY AGREED AND STIPULATED, by and between the solicitors for the Complainants and Intervenors, and the solicitors for the Defendants, that the certified record of the original proceedings before the Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, together with the Exhibits before the Deputy Commissioner, which were filed herein with the return of the Deputy Commissioner, may be transmitted with the appellate record in this case, and considered by the United States Circuit Court of Appeals, for the Ninth Circuit, herein.

Dated this 8 day of April, 1931.

L. B. SULGROVE,

Solicitor for Defendant, Thomas Winkler.

ANTHONY SAVAGE,

U. S. Atty.

JEFFREY HEIMAN,

Asst. U. S. Atty.

Solicitor for Defendant, Wm. A. Marshall. [17]

BOGLE, BOGLE & GATES,

LAWRENCE BOGLE,

STANLEY B. LONG,

GROSSCUP & MORROW,

JOHN AMBLER,

Solicitors for Complainants and Appellees.

WOOD, MONTAGUE & MATHIESSEN,
GUNTHER KRAUSE ERSKINE WOOD,
Solicitors for Waterfront Employers of Portland,
Oregon.

McCUTCHEN, OLNEY, MANNON & GREENE,
Solicitors for Waterfront Employers Union of San
Francisco.

R. I. VAN WINKLE,
THOS. G. RYAN,
Solicitors for State Industrial Accident Commission
of Oregon.

[Endorsed]: Filed Apr. 8, 1931. [18]

(Title of Court and Cause.)

ORDER.

Upon stipulation of the solicitors for all parties herein, it is by the court Ordered, and the court does hereby Order, that the Clerk of the above entitled Court, transmit with the appellate record in said cause, the original record of the proceedings before the Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, together with the Exhibits before the Deputy Commissioner, directly to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in order that the said original proceedings and exhibits may

be considered by said Circuit Court of Appeals.
Not to avoid printing unless the C. C. A. so wills.

Dated this 8 day of April, 1931.

BOURQUIN,
Judge.

OK—STANLEY B. LONG,
L. B. SULGROVE.

[Endorsed]: Filed Apr. 8, 1931. [19]

(Title of Court and Cause.)

STIPULATION.

IT IS HEREBY STIPULATED by and between the parties hereto Bogle, Bogle & Gates, Lawrence Boole, Stanley B. Long, Grosscup & Morrow, and John Ambler, attorneys for complainants; Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney for said District, attorneys for defendant Wm. A. Marshall; and L. B. Sulgrove, attorney for defendant Thomas Winkler, that the original transcript of testimony at the hearing before Wm. A. Marshall, Deputy Commissioner, held at Seattle, Washington, on October 23rd, 1930, also the evidence and exhibits which were introduced in evidence at said hearing on the 23rd day of October, 1930, being Exhibits Nos. 1, 2, 3, 4 and 5, shall constitute the

statement of evidence in the above entitled cause.
[20]

Dated this 3rd day of April, 1931.

BOGLE, BOGLE & GATES,
LAWRENCE BOGLE,
STANLEY B. LONG,
GROSSCUP & MORROW,
JOHN AMBLER,

Attorneys for Complainants.

ANTHONY SAVAGE,

United States Attorney.

JEFFREY HEIMAN,

Assistant United States Attorney.

Attorneys for Defendant Wm. A. Marshall.

L. B. SULGROVE,

Attorney for defendant Thomas Winkler.

[Endorsed]: Filed Apr. 6, 1931. [21]

(Title of Court and Cause.)

ORDER APPROVING STATEMENT
OF EVIDENCE.

I, Jeremiah Neterer, Judge of the above entitled Court, and the Judge before whom the above entitled case was tried, do hereby certify the complainants and defendants having been represented by their respective counsel in open Court, to wit: Bogle, Bogle & Gates, Lawrence Bogle, Stanley B. Long, Grosscup & Morrow, and John Ambler, at-

torneys for Complainants; Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney for said District, attorneys for defendant Wm. A. Marshall, Deputy Commissioner; and L. B. Sulgrove, attorney for defendant Thomas Winkler, and they agreeing that the foregoing is a true and complete statement of all the evidence essential to the decision of the questions previously presented by the appeal of the defendant from the decree entered herein against the defendants and in favor of the complainants; and do hereby [22] [Transcript of Testimony at hearing October 23, 1930 and Exhibits numbered 1, 2-3, 4 and 5.] approve and certify the same as the statement of evidence in the said matter for the purpose of said appeal, and do hereby order that the same become a part of the record for the purpose of said appeal, and further order that all the original exhibits be transmitted to the Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 6 day of April, 1931.

JEREMIAH NETERER,
United States District Judge.

O.K.

BOGLE, BOGLE AND GATES,
LAWRENCE BOGLE,
STANLEY B. LONG,

GROSSCUP & MORROW,
JOHN AMBLER,
Attorneys for Complainants.
C. B. SULGROVE, By C. S.,
Attorney for Defendant
Thomas Winkler.

[Endorsed]: Filed Apr. 6, 1931. [23]

(Title of Court and Cause.)

PETITION FOR APPEAL.

To the Honorable Jeremiah Neterer, District Judge:

The above named defendant, Thomas Winkler, feeling aggrieved by the Final Decree and Order of the Court, granting a permanent injunction, rendered and entered in the above entitled cause, on the 12th day of January, 1931, does hereby appeal from said Order, to the Circuit Court of Appeals, for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and he hereby prays that this appeal be allowed, and that citation be issued as provided by law, and a transcript of the record, proceedings and documents, upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, pursuant to the rules of such Court in such cases made and provided, and your petitioner further prays that the

proper order, relating to the security required of him, be made. [24]

Dated this 8 day of April, 1931.

L. B. SULGROVE,

Solicitor for Defendant,
Thomas Winkler.

ORDER ALLOWING APPEAL.

The above appeal is allowed upon giving bond, as required by law, to the complainants and appellees, in the sum of \$200 00/100, for costs and damages upon appeal.

Dated this 8 day of April, 1931.

BOURQUIN,

Judge. [25]

Service of the foregoing is hereby acknowledged, and receipt of a true copy admitted, this 8 day of April, 1931, and notice of the presentation of the same is waived.

BOGLE, BOGLE & GATES,
LAWRENCE BOGLE,
STANLEY B. LONG,
GROSSCUP & MORROW,
JOHN AMBLER,

Solicitors for Complainants and Appellees.

ANTHONY SAVAGE,

U. S. Attorney,

JEFFREY HEIMAN,

Asst. U. S. Atty.,

Solicitors for Deputy Commissioner

Wm. A. Marshall.

GUNTHER KRAUSE — ERSKINE WOOD,
WOOD, MONTAGUE & MATTHIESSEN,
Solicitors for Waterfront Employers
of Portland, Oregon.

McCUTCHEEN, OLNEY, MANNON & GREENE,
Solicitors for Waterfront Employers Union
of San Francisco.

I. R. VAN WINKLE,

Atty. Gen'l,

THOMAS G. RYAN,

Asst. Atty. Gen'l,

Solicitors for State Industrial

Accident Commission of Oregon.

[Endorsed]: Filed Apr. 8, 1921. [26]

(Title of Court and Cause.)

PETITION FOR APPEAL.

To the Honorable Jeremiah Neterer, District Judge:

The above named defendant, William A. Marshall, Deputy Commissioner, feeling aggrieved by the Final Order of the Court granting a permanent injunction, rendered and entered in the above cause on the 12th day of January, 1931, does hereby appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and he hereby prays that this appeal be allowed, and that citation be issued as provided by

law, and a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the rules of such Court in such cases made and provided.

Dated this 3 day of April, 1931. [27]

ANTHONY SAVAGE,

United States Attorney,

JEFFREY HEIMAN,

Assistant United States Attorney,

Attorneys for Defendant Marshall.

Service of the foregoing is hereby acknowledged, and receipt of a true copy admitted this 4th day of April, 1931.

BOGLE, BOGLE & GATES,

LAWRENCE BOGLE,

STANLEY B. LONG,

GROSSCUP & MORROW,

JOHN AMBLER,

Attorneys for Complainants.

L. B. SULGROVE,

Attorney for Thomas Winkler.

[Endorsed]: Filed Apr. 6, 1931. [28]

(Title of Court and Cause.)

NOTICE OF APPEAL.

To Andrew F. Mahony Company, a corporation, and
to Fidelity-Phoenix Fire Insurance Company,

a corporation, Complainants and Appellees, and to Messrs. Bogle, Bogle & Gates, Lawrence Bogle, Stanley B. Long, Grosscup & Morrow and John Ambler, Solicitors for Complainants and Appellees, and to Defendant Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and to Anthony Savage and Jeffrey Heiman, Attorneys for said Defendant:

NOTICE IS HEREBY GIVEN, that the defendant, Thomas Winkler, hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the Order and Final Decree of the above entitled Court, granting a permanent injunction herein, which said order and final decree was duly rendered and entered herein on the 12th day of January, 1931, and from each and every part thereof.

L. B. SULGROVE,

Solicitor for Defendant, Thomas Winkler. [29]

Service of the foregoing is hereby acknowledged, and receipt of a true copy admitted this 8 day of April, 1931.

BOGLE, BOGLE & GATES,
LAWRENCE BOGLE,
STANLEY B. LONG,
GROSSCUP & MORROW,
JOHN AMBLER.

Solicitors for Complainants and Appellees.

ANTHONY SAVAGE,

U. S. Attorney.

JEFFREY HEIMAN,

Asst. U. S. Atty.,

Solicitors for Deputy Commissioner

Wm. A. Marshall.

WOOD, MONTAGUE & MATTHIESSEN,

GUNTHER KRAUSE — ERSKINE WOOD,

Solicitors for Waterfront Employers of
Portland, Oregon.

McCUTCHEEN, OLNEY, MANNON & GREENE,

Solicitors for Waterfront Employers Union
of San Francisco.

R. I. VAN WINKLE,

THOS. G. RYAN,

Solicitors for State Industrial

Accident Commission of Oregon.

[Endorsed]: Filed Apr. 8, 1931. [30]

(Title of Court and Cause.)

NOTICE OF APPEAL.

To Andrew F. Mahony Company, a corporation, and Fidelity-Phoenix Fire Insurance Company, a corporation, Complainants, and to Messrs. Bogle, Bogle, & Gates, Lawrence Bogle, Stanley B. Long, Grosseup & Morrow, and John Ambler, Attorneys for Complainants, and to Thomas

Winkler, defendant and L. B. Sulgrove, attorney for defendant Thomas Winkler:

NOTICE IS HEREBY GIVEN that Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District, one of the defendants herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and final decree granting an injunction herein, which said order and final decree was duly rendered and entered herein on the 12th day of January, 1931, and from each and every part thereof.

ANTHONY SAVAGE,

United States Attorney.

JEFFREY HEIMAN,

Assistant United States Attorney,

Attorneys for Defendant

William A. Marshall. [31]

Service of the foregoing is hereby acknowledged, and receipt of a true copy admitted this 4th day of April, 1931.

BOGLE, BOGLE & GATES,

LAWRENCE BOGLE,

STANLEY B. LONG,

GROSSCUP & MORROW,

JOHN AMBLER,

Attorneys for Complainants.

L. B. SULGROVE. By C. S.

Attorney for Thomas Winkler.

[Endorsed]: Filed Apr. 6, 1931. [32]

(Title of Court and Cause.)

ORDER ALLOWING APPEAL.

This matter having come on regularly for hearing this day before the undersigned, Judge of the above entitled Court, and William A. Marshall, Deputy Commissioner, defendant herein, having presented his petition for an appeal and his assignment of errors accompanying the same, which petition upon due consideration of the Court is hereby allowed, and the Court hereby allows an appeal of the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 6 day of April, 1931.

JEREMIAH NETERER,
United States District Judge. [33]

Service of the foregoing is hereby acknowledged, and receipt of a true copy admitted this 4th day of April, 1931.

BOGLE, BOGLE & GATES,
LAWRENCE BOGLE,
STANLEY B. LONG,
GROSSCUP & MORROW,
JOHN AMBLER,
Attorneys for Complainants.
L. B. SULGROVE. By C. S.
Attorney for Thomas Winkler.

[Endorsed]: Filed Apr. 6, 1931. [34]

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

Comes now Thomas Winkler, one of the defendants and appellant in the above entitled cause, and files the following assignment of errors upon which he relies upon the prosecution of the appeal in the above entitled cause, from the order and final judgment made by this Court on the 12th day of January, 1931, granting a permanent injunction herein:

1. That the court erred in denying the defendant's motion to dismiss the bill of complaint herein, upon the ground and for the reason that it appeared from the face of the complaint, and the record, which was a part thereof, that the order of the Deputy Commissioner, requiring payments of \$25.00 per week to this defendant, was supported by competent evidence.

2. That the court erred in entering the permanent injunction and judgment herein, enjoining the payment to this defendant, as ordered by the Deputy Commissioner, of \$25.00 [35] per week, for the reason that the order of the Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, was supported by competent evidence, introduced at a hearing regularly held before him, and concerned matter over which the Deputy Commissioner had exclusive jurisdiction and discretion.

3. The court erred in entering the final judgment herein, and in the terms thereof, and in doing so, invaded and usurped the jurisdiction and discretion of the Deputy Commissioner in a matter duly and regularly decided by him.

4. The court erred in entering a final decree and judgment herein, upon the ground and for the reason that the same was contrary to the evidence.

WHEREFORE, defendant and appellant prays that said decree be reversed, and the District Court of the United States, for the Western District of Washington, Northern Division, be ordered and directed to enter a decree in accordance with the findings and decision of the Deputy Commissioner.

L. B. SULGROVE,

Solicitor for Appellant, Thomas Winkler.

[Endorsed]: Filed April 8, 1931. [36]

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

Comes now William A. Marshall, Deputy Commissioner, one of the defendants and appellant in the above entitled cause, and files the following assignment of errors upon which he relies upon the prosecution of the appeal in the above entitled cause, from the order and final judgment made by this Court on the 12th day of January, 1931, granting a permanent injunction herein:

1. That the Court erred in denying the defendant's motion to dismiss the bill of complaint herein on the ground that the bill of complaint did not state facts sufficient to constitute a valid cause of action in equity.

2. That the Court erred in entering the permanent injunction and judgment herein, enjoining the payment to the defendant Thomas Winkler, as ordered by the Deputy Commissioner, of \$25.00 per week, for the reason that the order of the Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation [37] Act, was supported by competent evidence, introduced at a hearing regularly held before him, and concerned matter over which the Deputy Commissioner had exclusive jurisdiction and discretion.

3. The Court erred in entering the final judgment herein, and in the terms thereof, and in doing so, invaded and usurped the jurisdiction and discretion of the Deputy Commissioner in a matter duly and regularly decided by him.

4. The Court erred in entering a final decree and judgment herein, upon the ground and for the reason that the same was contrary to the evidence.

WHEREFORE, defendant and appellant prays that said decree be reversed, and the District Court of the United States for the Western District of Washington, Northern Division, be ordered and directed to enter a decree in accordance with the find-

ings and decision of the Deputy Commissioner.

ANTHONY SAVAGE,

United States Attorney.

JEFFREY HEIMAN,

Assistant United States Attorney.

[Endorsed]: Filed Apr. 6, 1931. [38]

(Title of Court and Cause.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That we, Thomas Winkler, as principal, and National Surety Company, as sureties, acknowledge ourselves to be jointly indebted to Andrew F. Mahony Company, a corporation, and Fidelity-Phoenix Fire Insurance Company, a corporation, appellees in the above entitled cause, in the sum of two hundred & no/100 dollars, conditioned that, whereas on the 8 day of April, A. D. 1931, in the District Court of the United States for the Western District of Washington, Northern Division, in a suit depending in that court, wherein Andrew F. Mahony Company, a corporation, and Fidelity-Phoenix Fire Insurance Company, a corporation, are complainants, and Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and Thomas Winkler, are defendants, numbered on the equity docket as 781-E, a decree was rendered against the said Wm. A. Marshall, Dep-

uty Commissioner, and Thomas Winkler, and the said Thomas Winkler having obtained an appeal to the Circuit [39] Court, of the Ninth Judicial District, and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said Andrew F. Mahony Company, a corporation, and Fidelity-Phoenix Fire Insurance Company, a corporation, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, thirty days after the service of the said citation.

Now, if the said Thomas Winkler, shall prosecute his appeal to effect and answer all costs adjudged against him if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

THOMAS WINKLER,
By L. B. SULGROVE,

His Attorney.

(National Surety Company,
New York, Seal)

NATIONAL SURETY COMPANY,
By ARTHUR H. MIDDLETON,

Its Attorney-in-fact.

Approved: BOURQUIN, District Judge. [40]

(Title of Court and Cause.)

ORDER CONSOLIDATING APPEALS.

This matter having come on regularly before the undersigned, Judge of the above entitled Court, and it appearing to said Court that the defendant Wm. A. Marshall has given notice of appeal in the above entitled proceedings, and it further appearing to the Court that the defendant Thomas Winkler has also filed notice of appeal, and it further appearing that both parties are willing to consolidate their appeal, it is hereby

ORDERED, ADJUDGED and DECREED that the appeal of the two parties above named be, and the same are hereby consolidated, and that only the one record need be transmitted to the Circuit Court of Appeals.

Done in open Court this 6 day of May, 1931.

JEREMIAH NETERER,

United States District Judge.

[Endorsed]: Filed May 6, 1931. [40½]

(Title of Court and Cause.)

PRAECIPE.

To the Clerk of the Above Entitled Court:

You will please prepare and duly authenticate the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, in the above entitled cause, such record to consist of the following:

1. Bill of Complaint, including the Exhibit attached thereto.
2. Appearance on behalf of the defendant, Thomas Winkler.
3. Appearance on behalf of the defendant, Wm. A. Marshall.
4. Motion of the defendant, Thomas Winkler to dismiss the Bill of Complaint.
5. Motion of the defendant, Wm. A. Marshall to dismiss the Bill of Complaint.
6. Answer of the defendant, Thomas Winkler.
7. Final Decree.
8. Stipulation regarding transmission of the original record before the Deputy Commissioner and Exhibits. [41]
9. Order authorizing transmission of the original record before the Deputy Commissioner and Exhibits.
10. Stipulation relative to statement of evidence.
11. Order approving statement of evidence.
12. Petition for appeal of defendant Thomas Winkler.
13. Petition for appeal of defendant Wm. A. Marshall, Deputy Commissioner.
14. Notice of Appeal of Thomas Winkler, together with the endorsements and acknowledgment of service thereon.
15. Notice of Appeal of Wm. A. Marshall, together with the endorsements and acknowledgment of service thereon.
16. Order allowing appeal of Thomas Winkler.

17. Order allowing appeal of Wm. A. Marshall.
18. Citation on appeal of Thomas Winkler.
19. Citation on appeal of Wm. A. Marshall.
20. Assignment of errors *on* Thomas Winkler.
21. Assignment of error of Wm. A. Marshall.
22. Stipulation or bond for costs.
23. Clerk's Certificate.
24. This Praecepte.

Except on the Bill of Complaint, you are requested to omit all captions, except the name of the paper.

Except on the Notices of Appeal, you are requested to omit all acknowledgment of service.

You are further requested to transmit such record to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in the manner provided by law.

You will please transmit, pursuant to the stipulation and order of the Court, the original certified record of the proceedings before the Deputy Commissioner, together with the [42] original Exhibits introduced before him.

Dated this 27 day of April, 1931.

ANTHONY SAVAGE,

United States Attorney,

JEFFREY HEIMAN,

Assistant United States Attorney,

Attorneys for defendant

Wm. A. Marshall.

L. B. SULGROVE,

Attorney for defendant

Thomas Winkler.

(Title of Court and Cause.)

PRAECIPE.

To the Clerk of the above entitled Court:

You will please prepare and duly authenticate the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, in the above entitled cause, such record to consist of the following:

1. Bill of Complaint, including the Exhibit attached thereto.
2. Appearance on behalf of the defendant, Thomas Winkler.
3. Appearance on behalf of the defendant, Wm. A. Marshall.
4. Motion of the defendant, Thomas Winkler, to dismiss the Bill of Complaint.
5. Motion of the defendant, Wm. A. Marshall, to dismiss the Bill of Complaint.
6. Answer of the defendant, Thomas Winkler.
7. Final Decree.
8. Stipulation regarding transmission of the original record before the Deputy Commissioner and Exhibits.
9. Order authorizing transmission of the original record before the Deputy Commissioner and Exhibits. [44]
10. Stipulation extending time for filing statement of testimony.
11. Order extending time for filing statement of testimony.

12. Stipulation relative to statement of evidence.
13. Order approving statement of evidence.
14. Petition for appeal, Thomas Winkler.
15. Petition for appeal, Wm. A. Marshall.
16. Notice of appeal of Thomas Winkler, together with the endorsements and acknowledgments of service thereon.
17. Notice of appeal of Wm. A. Marshall, together with the endorsements and acknowledgment of service thereon.
18. Order allowing appeal of Thomas Winkler.
19. Order allowing appeal of Wm. A. Marshall.
20. Citation on appeal of Thomas Winkler.
21. Citation on appeal of Wm. A. Marshall.
22. Assignment of errors of Thomas Winkler.
23. Assignment of errors of Wm. A. Marshall.
24. Stipulation or bond for costs.
25. Clerk's Certificate.
26. This Praeceptum.

Except on the Bill of Complaint, you are requested to omit all captions, except the name of the paper.

Except on the Notices of Appeal, you are requested to omit all acknowledgment of service.

You are further requested to transmit such record to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in the manner provided by law.

You will please transmit, pursuant to the stipulation and order of the Court, the original certified record of [44½] the proceedings before the

Deputy Commissioner, together with the original Exhibits introduced before him.

Dated this 24th day of April, 1931.

Solicitors for Defendant,
Wm. A. Marshall.

L. B. SULGROVE,
Solicitor for Defendant,
Thomas Winkler.

[Endorsed]: Filed Apr. 27, 1931. [45]

(Title of Court and Cause.)

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

(Consolidated appeal)

United States of America,
Western District of Washington.—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 45, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipis of counsel (except Items No. 10 and 11 of Winkler praecipis, omitted at request of Attorney Sulgrove), filed and shown

herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on consolidated appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellants herein for making consolidated record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to-wit: [46]

	Appellant Marshall	Appellant Winkler
Clerk's fee (Act of Feb. 11, 1925)		
for making record, certificate or return, 76 folios at 15¢, \$11.40, charging one-half to each appellant	\$ 5.70	\$ 5.70
Appeal fee (Sec. 5 of Act).....	5.00	5.00
Certificate of Clerk to Transcript of Record25	.25
Certificate of Clerk to Original Exhibits25	.25
	\$11.20	\$11.20

I hereby certify that the above cost on behalf of appellant Marshall for preparing and certifying record, amounting to \$11.20 has not been paid to

me for the reason that the appeal on behalf of appellant Wm. A. Marshall is being prosecuted by the United States Government.

I further certify that the above cost on behalf of appellant Winkler for preparing and certifying record, amounting to \$11.20 has been paid to me by the attorney for said appellant.

I further certify that I herewith transmit the original citations issued in the above cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court, at Seattle, in said District, this 6th day of May, 1931.

[Seal] ED. M. LAKIN,
Clerk of the United States District Court for the
Western District of Washington,
By T. W. EGGER,
Deputy. [47]

(Title of Court and Cause.)

CITATION ON APPEAL.

The United States of America,—ss.

To

Andrew F. Mahony Company, a corporation, and to
Fidelity-Phoenix Fire Insurance Company, a corporation:

YOU and EACH OF YOU, are hereby cited and admonished to be and appear in the United States

Circuit Court of Appeals for the Ninth District, in the City of San Francisco, State of California, thirty days from and after the date this citation bears, pursuant to an order allowing an appeal, filed and entered in the Clerk's Office, in the United States District Court, Western District of Washington, Northern Division, from an order granting a final decree and permanent injunction herein, filed and entered on the 12th day of January, 1931, in that certain suit in equity, No. 781-E, wherein Andrew F. Mahony Company, a corporation, and Fidelity-Phoenix Fire Insurance Company, a corporation, [48] are complainants and appellees, and Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and Thomas Winkler, are defendants, and you are ordered to show cause, if any there be, why the order and final judgment rendered against the said defendants on January 12, 1931, as in said appeal mentioned, should not be corrected, and why justice should not be done to the appellant William A. Marshall, Deputy Commissioner, in that behalf.

WITNESS, The Honorable District Judge, for the Western District of Washington, Northern Division, this 6th day of April, 1931.

(Seal) JEREMIAH NETERER,
United States District Judge.

Service of the foregoing is hereby acknowledged, and receipt of a true copy admitted this 4th day of

April, 1931.

BOGLE, BOGLE & GATES,
LAWRENCE BOGLE,
STANLEY B. LONG,
GROSSCUP & MORROW,
JOHN AMBLER,

Attorneys for Complainants.

L. B. SULGROVE, By C. S.,

Attorney for Thomas Winkler.

Attorney for Thomas Winkler. [49]

[Endorsed]: Filed Apr. 6, 1931. [48]

(Title of Court and Cause.)

CITATION ON APPEAL.

The United States of America,—ss.

To

Andrew F. Mahony Company, a corporation, and
to Fidelity-Phoenix Fire Insurance Company,
a corporation:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, in the City of San Francisco, State of California, thirty days from and after the date this citation bears, pursuant to an order allowing an appeal, filed and entered in the Clerk's Office, in the United States District Court, Western District of Washington, Northern Division, from an order granting a final decree and

permanent injunction herein, filed and entered on the 12th day of January, 1931, in that certain suit in equity, No. 781-E, wherein Andrew F. Mahony Company, a corporation, and Fidelity-Phoenix Fire Insurance Company, a corporation, are complainants and appellees, and Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' [50] Compensation Act, and Thomas Winkler, are defendants, and you are ordered to show cause, if any there be, why the order and final judgment rendered against the said defendants on January 12, 1931, as in said appeal mentioned, should not be corrected, and why justice should not be done to the appellant Thomas Winkler, in that behalf.

WITNESS, The Honorable District Judge, for the Western District of Washington, Northern Division, this 8 day of April, 1931.

[Seal]

BOURQUIN,
District Judge. [51]

Service of the foregoing is hereby acknowledged, and receipt of a true copy admitted this 8 day of April, 1931.

BOGLE, BOGLE & GATES,
LAWRENCE BOGLE,
STANLEY B. LONG,
GROSSCUP & MORROW,
JOHN AMBLER,

Solicitors for Complainants and Appellees.

ANTHONY SAVAGE,
U. S. Atty.

JEFFREY HEIMAN,

Asst. U. S. Atty.

Solicitors for Deputy Commissioner

Wm. A. Marshall.

WOOD, MONTAGUE & MATTHIESSEN,

GUNTHER KRAUSE — ERSKINE WOOD,

Solicitors for Waterfront Employers of Portland,
Oregon.

McCUTCHEN, OLNEY, MANNON & GREENE,

Solicitors for Waterfront Employers Union of San
Francisco.

R. I. VAN WINKLE,

THOS. G. RYAN,

Solicitors for State Industrial Accident Commission
of Oregon. [52]

[Endorsed]: No. 6462. United States Circuit Court of Appeals for the Ninth Circuit. Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and Thomas Winkler, Appellants, vs. Andrew F. Mahony Company, a Corporation, and Fidelity-Phoenix Fire Insurance Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed May 8, 1931.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By FRANK H. SCHMID,

Deputy Clerk

